ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ARKANSAS.[1]
SUPREME COURT OF CALIFORNIA.[2]
SUPREME COURT OF IOWA.[3]
SUPREME COURT OF NEBRASKA.[4]
SUPREME COURT OF RHODE ISLAND.[5]
SUPREME COURT OF APPEALS OF VIRGINIA.[6]
SUPREME COURT OF WISCONSIN.[7]

ATTORNEY AND CLIENT.

Attorney's Lien—Fraudulent Settlement Out of Court.—Where, in an action for divorce and alimony, an order is made by the court in which the case is pending, requiring a sum of money to be paid into the court as and for attorney's fees, and afterwards the parties to the action, by collusion and fraud, and for the purpose of defrauding the attorney for plaintiff out of the allowance made for his compensation, with notice of an attorney's lien thereon in his favor, enter into an alleged settlement by which the cause is to be dismissed, and the order for alimony satisfied, such fraudulent settlement will, on motion of the attorney entitled to the money, be set aside, and the amount found due ordered to be paid into the court by the defendant: *Aspinwall* v. *Sabin*, 22 or 23 Neb.

BANKS AND BANKING.

National Banks—Penal Actions against—Jurisdiction of State Courts.—Action and proceedings against any association under the national banking act may be brought in any state, county, or municipal court in the county or city in which such association is located, having jurisdiction in similar cases. This applies to a penalty under section 5198 of the United States Revised Statutes: *First National Bank of Tecumseh* v. *Overman*, 22 or 23 Neb.

In such cases the state courts do not exercise a new jurisdiction conferred upon them, but their ordinary jurisdiction derived from their construction under the state law: *Claflin* v. *Houseman*, 93 U. S. 130: *Id.*

Certificate of Deposit—Unauthorized Payment to Agent.—Peyser, a collector in the employ of Honig, deposited in a bank, without the latter's knowledge, certain sums of money, and, in designating to whose order the same was to be payable, wrote in the bank register, "N. Honig, by S. A. Peyser." Thereupon the bank issued and delivered to Peyser certificates of deposit payable to the order of "N. Honig," which were afterwards paid by the bank upon the indorse-

[1] To appear in 49 or 50 Ark. Rep.
[2] To appear in 71 or 72 Cal. Rep.
[3] To appear in 71 or 72 Iowa Rep.
[4] To appear in 22 or 23 Neb. Rep.
[5] To appear in 15 or 16 R. I. Rep.
[6] To appear in 82 or 83 Va. Rep.
[7] To appear in 68 or 69 Wis. Rep.

ment by Peyser of "N. HONIG, by S. A. PEYSER." Subsequently, Honig, learning of the transaction, ratified the act of Peyser in depositing the money, and sued the bank upon the certificates so paid. *Held*, there was no contract, express or implied, that the certificates were payable only when indorsed according to the signature in the register; and that Honig was entitled to recover. MCFARLAND and PATERSON, JJ., dissenting: *Honig* v. *Pacific Bank*, 71 or 72 Cal.

CONTRACT.

Measure of Damages for Breach.—The defendant, in an action for money alleged to be due the plaintiff for printing done for the defendant, set up a counter-claim for damages resulting from a failure to have the printing done by the time agreed on. The defendant was a showman, and the printing consisted of pictorial posters, hand-bills, etc. *Held*, that the measure of damages, under the counter-claim, was the difference between what the defendant was to have paid the plaintiff under the contract and what he had to pay to effect, as far as was practicable, the same amount of advertising by the means which he actually used; but that he should not be allowed any compensation for loss of profits: *Great Western Printing Co.* v. *Tucker*, 71 or 72 Iowa.

Rescission of—Sale—Breach of Conditions—Delivery of Possession—Recovery of Purchase-Money.—D. Co. purchased of P. & J. a herd of cattle and calves, range, the possessory right of herding range, and miscellaneous outfit of herding and ranching property, situated at and known as the "Chadron Creek Ranch," on Chadron creek, in Sioux county, Nebraska. The purchase price was $76,530, $50,000 of which was paid down. The remaining sum, $26,530, was to be paid on or before the twenty-sixth day of June next ensuing the date of purchase, April 7, 1884; also a sum equal to the running expenses of the herd from December 26, 1883, to the day of payment. There was a bill of sale expressing the terms of sale as above, signed by P. & J., and placed in escrow in a bank at Cheyenne, Wyoming, with the following *memoranda:* "Placed in escrow with Morton E. Post & Co., this tenth day of April, 1884, to be delivered to said Dakota Stock & Grazing Company, Limited, upon compliance by said company with the terms of the within instrument, such compliance to be evidenced by the acknowledgment in writing thereof by Price & Jenks; otherwise to be returned to Price & Jenks." About the fourth day of June the agent of D. Co. informed P. & J. personally, at the city of Chicago, that he was on his way to Cheyenne and the Chadron Creek ranch for the purpose of closing up said business. On the sixth he wrote them from Council Bluffs, Iowa, requesting them to come or send an order to Chadron creek, whereby on their part the business might be settled up; and again on the tenth he telegraphed them from Cheyenne to the same purpose. On the 10th, P. & J. replied by telegraph from Chicago: "Impossible to make delivery or settlement now. Will be in Cheyenne prepared, June 26th." In an action by D. Co. to rescind said contract; and recover back the money paid thereon,

held, that D. Co. was not in default by reason of its not paying or tendering the $26,530 due on the contract of purchase, and a sum equal to the expense of keeping the herd, as provided in the contract, at the bank of Morton E. Post & Co., at Cheyenne; P. & J. declining to give any assurance that the property at Chadron Creek ranch would be delivered or the dominion thereof turned over to it on that day: *Dakota Stock and Grazing Co.* v. *Price*, 22 or 23 Neb.

P. & J. were in default in failing and refusing to take the necessary steps to enable them to deliver the possession, control, and dominion of the property to D. Co. on the twenty-sixth day of June, or sooner, in case D. Co. chose to make payment, and "take over" the property before that date, and in failing to deliver the property sold on the date last above mentioned: *Id.*

Upon the facts and law above stated, D. Co. may rescind the contract of purchase, and recover back the money paid thereon: *Id.*

Corporations.

Actions against—Corporate Name.—The fact that a corporation has changed its name, without any change in its membership, is no defence to an action instituted against it under its former name: *Wefley* v. *Shenandoah Iron, L, M. & M. Co.*, 82 or 83 Va.

Elections.

Ballots—Mistake in Name of Candidate—Evidence to Explain.—One E. W. was nominated for the office of township trustee by the political party to which he belonged; but the ballots, which were printed by a person who knew that E. W. was such candidate, but who supposed that his name was F. W., bore that name instead of E. W. After the election had progressed some time, the mistake was discovered, and it was corrected by writing "E." on the remaining ballots. Both the "E. W." and the "F. W." ballots were cast by members of E. W.'s party, and those who voted the "F. W." ballots thought at the time that that was E. W.'s name. There was no person by the name of F. W. in the township eligible to the office. *Held*, that these facts were admissible in evidence to show for whom the "F. W." ballots had been cast, and that they should be counted for E. W.: *Wimmer* v. *Eaton*, 71 or 72 Iowa.

Escrow.

Performance of Conditions—Right to Delivery.—Defendant executed to plaintiff his note and mortgage in settlement of a cause of action against him in her favor. The securities were delivered to a third party, to be handed by him to plaintiff when she had executed and delivered to him a good and sufficient release and satisfaction of her claim. *Held*, that this was a delivery in escrow, and that when plaintiff tendered the release to the third party she was entitled to the possession of the securities: *Schmidt* v. *Deegan*, 68 or 69 Wis.

Expert.

Testimony of—Value of Property.—Where a competent witness is called as an expert to testify as to the value of property, his testi-

mony is not rendered inadmissible by reason of the fact that he had not seen the property since about one month prior to the time when the value was to be established, it being shown by other testimony that the property was in substantially the same condition at both periods of time: *Connolly* v. *Miller*, 22 or 23 Neb.

Where a witness is called as an expert to testify as to the value of property in dispute, and it is shown upon examination that he is competent to so testify, and his testimony is taken, and upon cross-examination he is asked if his estimate of values is not based on what he would give for the property, which he answers in the affirmative, a motion to strike from the record all of the testimony of the witness was properly overruled. Such answer would not render the witness incompetent to testify, but, if unexplained, might diminish the weight of his testimony: *Id.*

INSURANCE.

Powers of Agents—Estoppel.—Where an insurance agent, clothed with all apparent authority, received defendants' note for a first premium, and agreed in writing with them that, if unsatisfactory, they might reject the policy, and the note would be returned, both note and agreement constituted the contract between the parties, and, upon the policy being rejected, the company cannot sue on the note, and claim that their agent had no authority to make the written agreement: *Jacoway* v. *German Ins. Co.*, 49 or 50 Ark.

Fire Insurance—Limitation of Action—Condition of Policy.—In an action commenced more than six months after loss, upon a policy of fire insurance which by its terms, limited the time for the commencement of actions thereunder to six months next succeeding the day upon which the loss should occur, and gave to the company sixty days after the receipt of sufficient and satisfactory proof in which to pay the loss, the defendant pleaded the former condition in bar, and the plaintiff's demurrer thereto was sustained. *Held*, that the condition limiting the time for the commencement of actions under the policy to a period less than that prescribed by the statute of limitations is valid, and that the latter provision did not operate to extend the time beyond the six months. HINTON, J., dissenting: *Virginia Fire & Marine Ins. Co.* v. *Wells*, 82 or 83 Va.

LANDLORD AND TENANT.

Lease—Joint Liability for Defective Premises.—The defendant M. was the owner of a defective wharf, which was used in connection with a place of public resort. He leased both, knowing the defect, to the defendant B., who was then ignorant of it, but who continued to use both for public resort after learning about it. In an action for damages to the plaintiff, who had been injured by said defect, *held* that the lessor and lessee were jointly liable: *Joyce* v. *Martin*, 15 or 16 R. I.